

E. NEAL GUNNARSON, #1273
Assistant Attorney General
MARK L. SHURTLEFF, #4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	AFFIDAVIT OF
	:	PROBABLE CAUSE
Plaintiff,	:	
vs.	:	
DONALD JOSEPH PURSER,	:	Case No. _____
DOB: April 21, 1954	:	
SSN: 339-50-4140	:	Judge _____
Defendant.	:	

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

I, JUDE ARCHULETA, being first duly sworn upon oath, state
as follows:

I am an investigator for the Utah Division of Securities of the
Department of Commerce. I hold a B.S. degree in Psychology, a B.S.
degree in Sociology and a Certificate in Criminology and Corrections
from the University of Utah. I have been employed by the Division of
Securities since 1996.

The Division has an active investigation involving the defendant. I have interviewed or reviewed interview summaries or depositions of Stephen Brockbank, Henry Cabal, John Garrett, Peter Helferich, Thomas Jones, Gerald Norman and others. I have reviewed documents provided by the above-mentioned individuals and the Commodity Futures and Trading Commission. I have also reviewed the records of the Utah Department of Corporations and Commercial Code, the National Association of Securities Dealers and Utah District Courts.

PARTIES

Donald J. Purser ("Purser") is an individual with a last known address of 3054 East Kennedy Drive in Salt Lake City, Utah. Purser is an attorney licensed by the Utah State Bar and has an office located at 2595 East 3300 South in Salt Lake City.

Stephen W. Brockbank ("Brockbank") is an individual with a last known address of 591 12th Avenue in Salt Lake City. The records of the Utah Department of Corporations and Commercial Code revealed **Birma, LTD** ("Birma"), a limited partnership, was organized on October 15, 1997. Brockbank was listed as the registered agent and partner. Carol J. Love was listed as a partner. The limited partnership was classified as "investment pools and funds".

The investigation by the Commodity Futures and Trading Commission

("CFTC") discovered from October 1997 through September 2000, investors provided at least \$2 million dollars to Brockbank for trading commodity futures contracts through Birma. The investors were told Brockbank would trade in commodities and the investors would receive a percentage of profits from the investments. Investors were told the investment in Birma had produced a 100% return per year for the past few years. The investment in Birma was described as passive and the only role of the investor was to supply capital for the investment. The investigation by the CFTC revealed Stephen Brockbank and Carol Love opened commodity futures trading accounts in the name of Birma with at least three futures commission merchants. The CFTC discovered Brockbank and Love misappropriated investor funds by transferring the investors' funds into accounts in which Brockbank and Love maintained sole financial interest and paid themselves management and incentive fees.

OFFERS AND SALES

From November 1999 to May 2000, Donald J. Purser solicited at least six persons to invest in Birma. The investigation by the CFTC revealed from December 1999 through August 2000, Brockbank paid Purser a total of \$51,222 for the investors solicited by Purser. The money Purser received was a percentage of the administrative and incentive fees collected by Brockbank from the investors. The CFTC identified

Purser had a written agreement with Brockbank to solicit investors for the Burma pool for compensation. For each investor solicited by Purser, Brockbank agreed to pay Purser ½ of the annual administrative fee and 25% of the monthly incentive fees he charged the pool participants. The CFTC investigation also revealed on May 9, 2000, Purser wrote a letter to a prospective investor in Indiana named Tim Voorhees that falsely represented Brockbank's daily trading reports were actual trades.

On January 12, 2001, Purser admitted in a deposition taken by the CFTC he negotiated with Brockbank to receive 25% of the fee and a percentage of profits from the Burma investment. Purser admitted he referred five to seven clients to Brockbank for the Burma investment and he received commissions from Brockbank. Purser said he told investors the investment in Burma involved commodities and had a good track record. Purser said Brockbank had been getting 50% to 100% a year for the last several years. Purser allowed Brockbank to use a conference room in Purser's office to talk with potential investors about Burma.

UNREGISTERED SECURITIES

The Director of the Division, S. Anthony Taggart opined the investment offered in Burma is a security under §61-1-13. A search of the records of the Utah Division of Securities revealed the security

was not registered nor was the investment a federal-covered security for which a notice filing had been made. S. Anthony Taggart has also opined the investment in Burma does not qualify for an exemption from registration.

UNLICENSED AGENT

The records of the Utah Division of Securities revealed Purser has never been licensed to sell securities in the State of Utah or elsewhere. Purser is in violation of §61-1-3.

OMISSIONS AND/OR MISREPRESENTATIONS

In connection with the offer and sale of the investment in Burma, Purser, directly or indirectly, made the following misrepresentations to some or all of the investors:

1. Risk. Purser told Gerald Norman, an investor, the investment could be a high risk but the only way the principal could be lost was if the entire commodities market went under. In reality, commodities are highly speculative and it is impossible to guarantee against losses.

2. Purser told Gerald Norman he had checked out the investment in Burma and everything with the investment was legal. The CFTC also discovered several investors received a copy of an eight page opinion letter Purser prepared for and sent to Brockbank in which Purser opined that investing through Burma's offshore operation was legal.

In reality, the investment was not a registered security or exempt from registration, the investment was offered or sold by unlicensed agents and investors were not provided full disclosure, which violated provisions of the Securities Act.

Purser, directly or indirectly, made misleading statements or failed to disclose certain material information upon which investors could make an informed decision. Purser made the following omissions and others to some or all of the investors:

1. Purser had a fee arrangement with Brockbank whereby Purser would receive $\frac{1}{2}$ of the annual administrative fee and 25% of the monthly incentive fee Brockbank charged the investors.

2. Ned Hart and several of his companies had been charged with securities fraud by the Securities and Exchange Commission and Brockbank had been an investment advisor for at least two of the named companies in the action.

3. Purser owned 15% of Hart's company, the Commonwealth Group. There was pending litigation alleging securities fraud against Purser, the Commonwealth Group and others in Federal Court.

4. A complete description of the investment;

5. The identity of the officers, directors, managers or others directly related to the investment and their experience;

6. Purser's relationship to the investment;

7. How the investment proceeds would be used;
8. The number of investors;
9. Assets, debts or liabilities of Birma or Brockbank;
10. Whether the investment funds would be pooled;
11. Whether there was a conflict of interest against the investor;
12. Whether the investment was registered or exempt from registration in securities;
13. Whether Brockbank or others were licensed in commodities or securities;
14. Compensation or salaries paid;
15. Whether there were any lawsuits, judgments, tax liens, bankruptcy or action taken by regulatory agencies against anyone directly related to the investment;
16. The true degree of risk.

These omissions made Purser's previous statements concerning the investment misleading.

COUNTS 1 THROUGH 3
SECURITIES FRAUD, a second degree felony
OFFER OR SALE OF UNREGISTERED SECURITIES, a third degree felony
UNLICENSED BROKER-DEALER OR AGENT, a third degree felony
(GERALD NORMAN)

Gerald Norman was introduced by his son, John Norman, to Don Purser at a communications seminar in Salt Lake City in April or May

of 1999. Norman's son worked in the same office as Purser in Salt Lake City. A few days after the introduction, Norman was at his son's office when Purser mentioned an investment in Burma.

Purser said the investment in Burma involved offshore trading and investors received a percentage of profits from the trades. Purser said an individual named Stephen Brockbank made the investments for Burma. Purser drew figures and diagrams on a whiteboard as he explained the investment. Purser said the Burma investment had produced around a 100% return over the past couple of years. Purser stated the investment was expected to yield around a 120% for the year of 1999. Purser told Norman the worst return investors in Burma received was 80% one year. Purser showed Norman graphs and charts stating Burma was making money. Purser said the Burma investment was offshore. Purser said offshore investments wouldn't have as many government regulations and yielded a higher profit than onshore investments. Purser told Norman he had checked out the investment in Burma and everything was legal. Purser said the minimum investment in Burma was \$100,000.

Norman asked Purser about the risk involved with the investment. Purser told Norman the investment could be a high risk but the only way the principal could be lost was if the entire commodities market went under. Purser said in the worst case scenario, if the investment

only made a 40% return, the investment in Birma would still yield a higher profit than other investments. Purser told Norman the investment in Birma was liquid. Purser told Norman he was investing his own money in Birma. Purser mentioned he was getting a second mortgage to obtain investment funds for Birma.

Norman told Purser he didn't have \$100,000 to invest. Purser told Norman he would see what he could arrange. Purser later told Norman he was able to take care of the minimum investment situation and Norman could invest less than \$100,000. Norman told Purser the funds he would be investing in Birma were all of his retirement funds. Purser told Norman he would have to invest a little differently for retirement funds and Purser told Norman would have to invest through Mid-Ohio with a self-directed IRA. Norman told Purser he wanted monthly income from the investment. Purser told Norman he had to set up a limited partnership with someone with a different last name as a signatory in order to get paid from the investment. Norman had his sister, Sharon Doxey sign for the limited partnership called Devonna Investors. While Norman was present, Doxey also asked Purser if everything with Birma was legal. Purser told Norman and Doxey the investment in Birma was legal. Norman paid Purser approximately \$3,000 to set up Devonna Investors.

Purser did not disclose to Norman a complete description of the investment, the identity of the officers, directors or others directly related to the investment and their experience, specifically how the investment proceeds would be used, the number of investors, assets, debts or liabilities, whether money from investors would be pooled, whether there was a conflict of interest, whether the investment was registered or exempt in securities, whether Brockbank, Purser or others were licensed in securities, compensation paid to Brockbank, commissions paid related to the investment, risk factors or whether there were any lawsuits, judgments, tax liens, bankruptcy, criminal history or action taken by regulatory agencies against Purser, Brockbank or others affiliated with the investment. At this time, there was an outstanding judgment against Brockbank for \$102,727 and garnishments had been issued for collection. The Securities and Exchange Commission had charged Ned Hart and several of his companies including the Commonwealth Group, with securities fraud and Brockbank had been an investment advisor for at least two of the named companies in the action. Purser admitted in a deposition he knew the SEC had charged Hart and the Commonwealth Group with securities violations. Purser also admitted he was a 15% owner of the Commonwealth Group. In addition, Purser failed to disclose Purser had a fee arrangement with Brockbank whereby Purser would receive ½ of the annual administrative

fee and 25% of the monthly incentive fee that Brockbank charged the investors.

Beginning in May 1999, Norman started setting up an account at Mid-Ohio Securities at Purser's instruction. The account was completed in December of 1999. Norman received all documents related to the investment and setting up the IRA from Purser or Purser's secretary at Purser's office in Salt Lake City. Purser filled out a portion of the documents for Norman and Norman signed the documents for the investment at Purser's office

On October 27, 1999, Mid-Ohio sent a check for \$70,000 to Devonna Investments. On November 12, 1999, Norman sent a check for \$70,000 to Birma for the investment. After Norman invested, he wanted to make arrangements to receive the monthly interest from the investment. Purser gave Norman Brockbank's telephone number and Norman spoke with Brockbank regarding the interest payments. Norman received statements in the mail at his home in Salt Lake County. The statements claimed the investment in Birma had made a profit. In May or June 2000, Norman told Brockbank he needed to obtain a larger amount of money from the investment for one month. Brockbank told Norman the market had gone down a little and to give Brockbank a few weeks to get the best return on the funds.

In the summer of 2000, Norman received a letter from the Commodity Futures and Trading Commission. Norman called Purser regarding the letter. Purser told Norman Brockbank was running into some problems. Purser said Brockbank was waiting for his license but had not yet received the license. Purser told Norman it wasn't a big deal and not to worry. Purser told Norman that Brockbank would have his license soon. From January 2000 through July 2000, Norman received \$21,800 from the investment in Burma before the payments stopped.

**COUNT 4 AND COUNT 5
OFFER OR SALE OF UNREGISTERED SECURITIES, a third degree felony
UNLICENSED BROKER-DEALER OR AGENT, a third degree felony
(PETER HELFERICH)**

Helperich had sold his previous business in June of 1999. Helperich was concerned with asset protection and was looking on the Internet. Helperich discovered a company on the island of Nevis called Life International. Life International had an extensive website on asset protection. Don Purser's information including a biography was listed on the Life International website. From September 1999 through November 1999, Helperich called Purser and had several conversations about asset protection. Purser recommended a limited liability partnership with a corporation as a general partner

of the LP. Helferich agreed to a limited partnership with an LLC as the general partner.

Helferich was introduced to Birma by Don Purser. Purser said he knew of someone in Utah who he felt was a very successful commodities investor. Purser told Helferich he had one client who had invested with Steven Brockbank and had done quite well. Helferich said he was aware futures were done on margins and there was the possibility of losing the total investment. Helferich said he had been studying about investments since he sold his business.

In October or November of 1999, Helferich met Purser in Utah at Purser's office in Salt Lake City concerning asset protection and estate planning. Purser recommended Helferich invest some money with Steve Chapman who was a salesperson for insurance annuities in an adjacent office to Purser and some with Brockbank in the Birma investment. Helferich met with both Steve Chapman and Brockbank. Helferich told Purser he needed \$100,000 a year after taxes to live. Purser asked Brockbank how much Helferich had to invest in Birma to provide \$100,000 a year in income. Brockbank said it would not be a problem to provide a \$100,000 income from a \$250,000 investment. Brockbank told Helferich Brockbank received 20% of the profits each month from the investment and 1% of the assets. There was no discussion of a commission or a finder's fee to Purser.

The next day, Helferich went to Brockbank's residence where Brockbank showed Helferich a computer. Helferich asked Brockbank to show him statements of the accounts of some of his clients. Brockbank pulled open a filing cabinet drawer that was filled with documents but did not show Helferich the statements. Brockbank discussed data feeds and how Brockbank received information. Helferich had additional conversations with Purser about Brockbank's capabilities. However, Helferich did not remember anything specific about the discussions with Purser. Purser told Helferich a female client of his had done due diligence on Brockbank and was satisfied that Brockbank would be acceptable.

On November 16, 1999, Helferich invested \$100,000. Helferich received monthly reports from Brockbank which stated the investment had made a profit. On May 24, 2000, Helferich invested an additional \$150,000 by wiring the funds to an account at Bank One in Utah. Helferich received a Private Placement Memorandum for the investment from Brockbank. Helferich began receiving interest payments from the investment in December of 1999. Helferich also received email correspondence from Brockbank concerning the investment.

COUNT 6 AND COUNT 7
OFFER OR SALE OF UNREGISTERED SECURITIES, a third degree felony
UNLICENSED BROKER-DEALER OR AGENT, a third degree felony
(HENRY CABAL)

Henry Cabal first met Don Purser in early 2000. Cabal consulted with Purser at Purser's office in Salt Lake City on creating an LLC or an LLP. Cabal wanted to use the LLC or LLP to invest in the market. Cabal and Purser were talking about investments and Purser mentioned he knew someone who was doing well in futures. Purser told Cabal he had personally invested with Stephen Brockbank. Purser said the investment with Brockbank was a good investment and he had been doing well in the investment. Purser told Cabal the return from the investment with Brockbank was a high return. Purser arranged the initial meeting between Brockbank and Cabal.

Approximately two weeks later, Cabal met with Brockbank in a conference room at Purser's office in Salt Lake City. Purser introduced Cabal to Brockbank and then left the room. Brockbank told Cabal he had a method to trade in futures. Brockbank said he was making around 98% in annual returns from the trades. Brockbank gave Cabal documentation on the investment and showed Cabal charts that claimed a history of returns. In the literature Brockbank gave Cabal, Neil Harrington was listed as an individual that did trades with Brockbank. Cabal knew Harrington and asked Harrington about Brockbank. Harrington said he had only done one or two trades for

Brockbank. Harrington said a good trader could produce a good rate of return. Harrington did not know how well Brockbank traded.

Cabal had two or three additional meetings with Brockbank about the investment at Purser's office. Purser was only present for the first part of the meetings. Brockbank told Cabal the minimum investment he would accept was \$100,000. Brockbank said he would pay Cabal a percentage of the profits generated from the trades and the return would be approximately an 80% to 90% annual return. Brockbank assured Cabal he would not have to worry about the investment. Brockbank said he might have losses in a trade however the trades overall would be profitable. Brockbank described the investment as passive and Cabal's only role was to supply capital to the investment. Cabal was not told the amount of money being traded, how the money would be invested, the firms used to conduct the trades, the identity of others related to the investment, the amount of money raised from investors, whether commissions or compensation was paid, compensation paid to Brockbank, whether investors' funds were pooled, the number of investors, whether the investment was registered or exempt from registration in securities, whether Brockbank or others were licensed, Brockbank's education, experience and expertise in the industry or whether there were any lawsuits, judgments, tax liens, bankruptcy or action taken by regulatory agencies against Brockbank or others directly related to the investment.

In February of 2000, Cabal invested a total of \$300,000 on two separate occasions. Cabal either sent checks or wired the money at Brockbank's instruction. Cabal did not authorize Brockbank to use his investment funds for anything other than the investment described above. Cabal elected to reinvest profits rather than receive monthly interest distributions. Cabal received statements and emails about the investment from Brockbank. The statements showed Brockbank never had a loss and the investment had produced a return.

After Cabal invested, Cabal asked Purser how much Purser received since Cabal invested and whether Purser's commission came out of Cabal's investment or if Brockbank paid Purser. Purser admitted to Cabal he would receive a commission for Cabal's investment with Brockbank and Brockbank would pay Purser the commission. Purser did not disclose the amount of the commission.

In 2000, when Cabal stopped receiving statements from the investment, Cabal called Purser. Purser told Cabal not to worry about the investment. Purser said Brockbank forgot to do something with the investment pool and Brockbank was correcting the problem. Purser later would not take Cabal's calls. Cabal has never received any return of funds from his investment.

COUNT 8
PATTERN OF UNLAWFUL ACTIVITY (Racketeering)
A second degree felony

From in or about April 1999 through February 2000, the defendant engaged in three or more episodes of unlawful activity constituting a

pattern of unlawful activity. That pattern of unlawful activity included the conduct outlined in Counts 1 through 7 above, in the offer and sale of securities. These unlawful activities include violations of the Utah securities laws. As a result of these unlawful activities, the defendant acquired, operated and maintained an interest in the enterprise.

SUMMARY

There is probable cause to believe the defendant **DONALD J. PURSER** committed the offenses of:

**SECURITIES FRAUD,
a second degree felony, 1 count**

**OFFER OR SALE OF UNREGISTERED SECURITIES,
a third degree felony, 3 counts**

**UNLICENSED BROKER-DEALER OR AGENT,
a third degree felony, 3 count**

**PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count**

DATED this _____ day of _____, 2003.

JUDE ARCHULETA, Affiant

SUBSCRIBED AND SWORN to before me on this
_____ Day of _____, 2003.

JUDGE, THIRD DISTRICT COURT